

Via Electronic Delivery

February 3, 2005

Federal Communications Commission

Via: <http://www.fcc.gov/cgb/ecfs>

Re: CG Docket No. 02-278

Petition for Declaratory Ruling on State Regulation of Interstate Telemarketing Calls (Indiana)

Dear Sir or Madam:

KeyCorp ("hereinafter Key"), one of the nation's largest bank-based financial services companies with assets of approximately \$88 billion, is pleased to comment on the Federal Communication Commission's (FCC) Petition for Declaratory Ruling filed by the Consumer Bankers Association (CBA), asking the FCC to preempt certain sections of the Indiana Revised Statutes and Indiana Administrative Code as it relates to interstate telemarketing calls. In addition, we urge you to carefully consider comments submitted that make up the opinions from the various trade associations such as the Financial Services Roundtable, the Direct Marketing Association, and the American Bankers Association of which we are members.

Consumer Bankers Association (CBA) Petition for Declaratory Ruling

The CBA petition requests that the FTC preempt the Indiana statute and regulations to the extent they prohibit telemarketing calls to persons and entities with which the caller has an established business relationship as defined in the FCC's rules.

Background

Under the FCC's rules, telemarketing calls may be placed to any persons with whom the caller has an established business relationship, even where the called party's number has been entered on the national do-not-call registry. *An established business relationship, in turn, is defined as "a prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration, on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months preceding the date of the call, which relationship has not been previously terminated by either party."*

The telemarketing statute of the State of Indiana prohibits solicitation calls to any persons with whom the caller has an established business relationship, whether the calls are made from a location in Indiana or outside Indiana.

Although Indiana's prohibition on calls to numbers on the Indiana do-not-call list includes exceptions that partially overlap with the FCC's telemarketing rules, the Indiana exemptions do not cover the most common kinds of established business relationship encompassed by the FCC's rules, and therefore prohibit interstate calls that are permitted by applicable federal law.

The Indiana exceptions do not include calls to persons with whom the caller has had an established business relationship within 18 months prior to the call or relationships based upon a consumer's past inquiry or application, during the three months preceding the call.

Finally, the Indiana statute, unlike the FCC's rules, does not expressly permit an established business relationship to extend to any affiliated entities that the consumer reasonably would expect to be included within that category.

Key's Position

Key companies provide consumer finance, investment management, retail and commercial banking, retirement, and investment banking products and services to individuals and companies throughout the United States. Key has a presence from Maine to Alaska, and we deliver products and services through a network of KeyCenters (branches), ATMs, affiliate offices, telephone banking centers and a website, Key.com.

To advise existing customers of opportunities they may find of value, such as the availability of more favorable interest rates as well as providing investment opportunities, Key may place interstate telephone calls to those customers in compliance with the Telephone Consumer Protection Act ("TCPA") and the FCC's implementing rules.

While the FCC permits states to impose more restrictive telemarketing regulations with respect to intrastate calls, the Indiana statute does not restrict its coverage to intrastate calls. Therefore, if Key places calls to Indiana customers from locations outside Indiana, we may be subject to enforcement action by the Indiana attorney general, even where those calls comply fully with federal law.

Key would urge the FCC to preempt those sections of the Indiana Statutes and Administrative Code that prohibit the making of any interstate telemarketing call that is permitted, under the FCC's rules, with regard to calls made to persons with whom the caller has an established business relationship.

We thank the FCC for the opportunity to provide our thoughts and comments on the proposed rules. If you have any questions regarding our comments, please do not hesitate to contact me at (216) 689-4552 or our Do Not Solicit Specialist, Janice Stadin at (216) 689-5060.

Sincerely,

Brian Dean
Chief Privacy Officer
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